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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,610	11/19/2001	Anthony J. Hadala	1181-01	7580

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EXAMINER

JACKSON, ANDRE K

ART UNIT PAPER NUMBER

2856

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,610

Applicant(s)

HADALA, ANTHONY J.

Examiner

André K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6,8,10,13,14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8,10,13,14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa.

Regarding claim 1, Furuhashi et al. disclose a "Keg for draft beer" which has a container having an outlet for a first fluid and an inlet for a second fluid introducing carbon dioxide, a container having a first carbonated fluid region, a first carbonated fluid being present at an original level of the container, the container, for when in use, having a first carbonated fluid at least partially removed from while introducing carbon dioxide to the container forming a second carbonated fluid region (Column 2, Figure 3). Furuhashi et al. do not disclose mounting on the container at least one temperature-measuring device in the form of an elongated thin strip , a temperature-measuring device being located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the

second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container. However, Ogawa discloses a "Method and device for detecting a liquid level in a container" which has at least one temperature-measuring device in the form of an elongated thin strip located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container (Abstract, Columns 1-2 lines 50-65 and 1-7, Figures 1,3). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid

in the container as taught by Ogawa since one would want to accurately know the amount of liquid remaining in a container.

Regarding claim 2, neither Furuhashi et al. nor Ogawa gives particular times at which the temperatures are observed. However, to observe the temperatures when the first fluid is at least partially withdrawn through the outlet and when the second fluid is introduced through the inlet is well within the purview of the skilled artisan since the container can be observed every minute on the minute or hourly.

Regarding claim 10, Furuhashi et al. disclose where the container is in a refrigerator (Column 2).

3. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Rait.

Regarding claim 6, Furuhashi et al. do not disclose a temperature-measuring device being adhered to the container. However, Rait discloses in "Liquid level gauge" where the temperature-measuring device is adhered to an outer surface of the container as a magnetic strip (Abstract, Column 2). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include where the temperature-measuring device is adhered to an outer surface of the container as a magnetic strip as taught by Rait since some containers are

made of metal where a magnet can be applied and this would allow for the device to on the container regardless on the on set of condensation.

Regarding claim 13, Furuhashi et al. do not disclose the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F. However, Rait discloses the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F (Column 3). Therefore, it would have been obvious tone of ordinary skill in the art at the time the invention was made to modify Furuhashi et al. to include the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F as taught by Rait. By adding this feature the user would be able to induce a temperature change.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Hof et al.

Regarding claim 8, neither Furuhashi et al. nor Ogawa discloses a eutectic measuring device. However, Hof et al. disclose a "Temperature indicating compositions of matter" which has a eutectic measuring device (Column 30, line 41). Therefore, the skilled artisan would have been inclined to modify Furuhashi et al. to include a eutectic measuring device

as taught by Hof et al. since having a proper temperature range for the liquid is essential. Hof's et al. temperature device is a disposable temperature device.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Cannon.

Regarding claim 14, neither Furuhashi et al. nor Ogawa disclose a keg having a pressure between 5 and 100 psi. However, Cannon discloses a "Bulk carbonated beverage container" which has a keg having a pressure between 5 and 100 psi (Column 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a keg having a pressure between 5 and 100 psi as taught by Cannon since this modification would ensure that the container is liquid tight capable of resisting damage from external forces. The temperature is not given by Cannon, but the reference does disclose that the keg is returnable and with that being true the keg would have to experience different temperature changes especially one being in the range of 70°F.

6. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Brown et al.

Regarding claim 17, Furuhashi et al. do not disclose where the device measures temperatures in the range of about 34 °F about 94°F. Brown et al. disclose where the device measures temperatures in the range of about 34 °F about 94°F (Column 12, lines 19-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Furuhashi et al. to include where the device measures temperatures in the range of about 34 °F about 94°F. By adding this feature the apparatus would be able to measure a precise range of temperatures.

Regarding claim 18, Brown et al. disclose (Column 12, lines 19-37). Furuhashi et al. do not disclose where the device measures temperatures in the range of about 34 °F about 94°F. Brown et al. disclose where the device measures temperatures in the range of about 34 °F to about 86°F (Column 12, lines 19-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Furuhashi et al. to include where the device measures temperatures in the range of about 34 °F to about 86°F. By adding this feature the apparatus would be able to measure a precise range of temperatures.

Response to Arguments

7. Applicant's arguments filed 07/20/04 have been fully considered but they are not persuasive. Applicant has argued that in the Furuhashi et al.

reference there is no recognition of foaming nor is there a liquid volume measurement if foaming occurs and that Furuhashi merely teaches a beer keg. It is noted that the features upon which applicant relies (i.e., recognition of foaming and a liquid volume measurement if foaming occurs) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The beer keg of Furuhashi et al. also disclose a first and second carbonated fluid region and introducing carbon dioxide of claim 1 (see rejection).

Applicant has argued that Ogawa has a patent, which is directed to a "water pitcher (transparent vessel)". However, Ogawa specifically states in Column 1, lines 6-10 and Column 2, lines 53-56 where the invention is concerned with measuring the liquid within an opaque container. Furuhashi et al. are concerned with an opaque container. Applicant's claim does not specify the composition of the container. Applicant questions how Rait can be used in combination with the Furuhashi et al. and Ogawa references. Claim 6 requires that the temperature-measuring device be adhered to an outer surface of the container as a magnetic strip. Yes, Rait discloses a propane tank (container), which is synonymous with Applicant's container found in the claims. Rait discloses where this magnetic strip is placed on a container (Abstract). Rait also discloses

where this invention can be placed on different types of containers
(Column 4, lines 53-69).

Applicant has argued "It cannot be obvious to do anything at the temperature range as recited in claim 13 when the temperature range does not exist in any applied reference". Starting with the definition of ambient. The brochure entitled "Ranger ST" supplied by the Applicant on 11/07/02 describes ambient temperature to be 23-25°C (73-77°F).

Finding a definition for ambient according to "Explanation Guide" (<http://explanation-guide.info/meaning/ambient-temperature.html>) which describes ambient to be the temperature of the surroundings or sometimes synonymous with room temperature and room temperature to be in the range of 21-23° (69.8 -73°F). Both references describe a temperature far below the claimed 105°F. Rait teaches that the cloth is warmer or colder than ambient (69.8 -77°F). Since the particular embodiment is used outside (Rait) and assuming the canister is used during the summer. The average ambient temperature in Buffalo (where the inventor Rait hails) during summer June-July would be between 74.8 and 79.6 according to the NOAA (National Oceanic and Atmospheric Administration www.ncdc.noaa.gov/oa/climate/online/ccd/nrmmax.txt). Rait teaches that the cloth can be colder than ambient (74.8 –79.6°F). Since it is established from the teachings of Explanation Guide, Ranger ST and NOAA that ambient is already less than 105°F there is a strong

indication that anything colder than ambient would be less than 105°F. All the reference (Rait) has to show is a cloth less than 105°F. The reference does not have to state the exact temperature of 105°F since the claim requires the temperature of the cloth to be less than 105°F.

Applicant has argued that there is no teaching in the Cannon patent where the pressure within the container is about 5 psi to about 10 psi. However, Cannon discloses where the pressure within (internal) the container is at 60 psi, which is between the claimed 5 psi and 100 psi (Column 1, line 35; Column 5, line 50; Column 6, line 13). Applicant has stated that the Examiner must cite a reference to the knowledge of claim 14, Chicoye et al. entitled "Accelerated fermentation of lager beer" disclose a container under pressure between 2-20 psig (claimed 5-100 psi) at the temperature between 60 and 85°F (claimed 70°F).

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (571) 272-2196. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

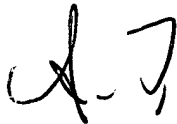
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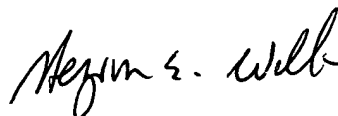
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A.J.



August 9, 2004



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